IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.95 of 2006
Date of decision: December 15, 2006.

Hi-bred (India) Pvt. Ltd.

...**Petitioner(s)**

v.

Siddashwar Farms (P) Ltd.

...**Respondent(s)**

Present: Shri Ashish Aggarwal, Advocate for the petitioner.

None for the respondent.

Surya Kant, J. (Oral)

This revision petition is directed against the order dated 19th December, 2005 passed by the learned Civil Judge (Junior Division), Karnal whereby an application under Order 6 Rule 17 CPC moved by the petitioner for amendment of the suit, has been dismissed.

A brief reference to the relevant facts may be made.

The petitioner-company claims to be engaged in poultry farming and had allegedly supplied 20,000 chicks to the respondent-defendant. According to the petitioner-plaintiff, the respondent-defendant is liable to pay a sum of Rs.3,03,656.95p as per the bill dated 1.2.1997 but only a sum of Rs.20,000/- was paid to it.

However, instead of a recovery suit, the petitioner-plaintiff filed a suit for mandatory injunction against the respondent-defendant. The suit appears to have been instituted on 5th August, 1997.

The respondent-defendant put appearance and while contesting the above stated suit, took a preliminary objection regarding its maintainability. Having realized that a suit for mandatory injunction, in the light of the above noticed facts, may not be maintainable, the petitioner-plaintiff moved an application under Order 6 Rule 17 CPC for amendment of the plaint to convert the suit for mandatory injunction into a suit for recovery. The aforesaid application, however, has been turned down by the learned trial court after observing that not only it would change its nature, the suit for recovery at this stage is barred by limitation as the application was moved after 8 years of the filing of the present suit.

Aggrieved, the petitioner-plaintiff has filed this revision petition in which notice of motion was issued, however, no one has put in appearance on behalf of the respondent despite service.

Head Learned Counsel for the petitioner and perused the impugned order.

It is true that the proposed amendment would change the nature of the suit from a suit for mandatory injunction to a suit for recovery. However, *per-se* it is no ground to reject an application for amendment. It is one of the cardinal principle of jurisprudence to curb multiplicity of litigation. The proposed amendment, thus, ought not have been denied merely on this ground.

As regard to the second reasoning, namely, that a suit for recovery on the basis of the cause of action which accrued in the year 1997, is barred by limitation at this stage, I am of the considered view that the question of limitation is a mixed question of law and facts. It will be too premature to presume at this stage that the 'cause of action' which accrued in

the year 1997 was never revived in the subsequent years. At the same time, it is not desirable to form any final opinion that the petitioner's suit is within the limitation period. In such like situation, it would have been more appropriate for the learned trial court to frame an issue issue on limitation and adjudicate the same at the time of final disposal of the suit. (Ref: **Ragu Thilak D. John v. S. Rayappan and others**, (2001)2 SCC 472).

Consequently, and for the reasons afore-stated, this revision petition is allowed; the impugned order dated 19th December, 2005 is set aside and while allowing the application under Order 6 Rule 17 CPC, petitioner-plaintiff is permitted to amend the suit, however, subject to the condition that the petitioner shall pay cost of Rs.2500/- to the respondent-defendant and the issue as to whether or not the suit is within limitation, shall be kept open and the same, if pressed into service by the defendant, shall be adjudicated upon at the time of final decision of the suit on merits.

December 15, 2006. [**Surya Kant**]
kadyan **Judge**